

Election

In response to the Restriction Requirement in the June 29, 2006 Office Action, Applicants hereby elect Invention I, or in other words, claims 1-8, *with traverse*.

REMARKS**I. Status of the Application**

Claims 1-19 and 23-25 are pending in this application. In the June 29, 2006 Office Action, the Examiner restricted claims 1-19 and 23-25 to one of Invention I consisting of claims 1-8, Invention II consisting of claims 8-16, and Invention III consisting of claims 17-19 and 23-25, the Examiner required Applicants to elect one of the three inventions.

In this response, Applicants have elected Invention I, consisting of claims 1-8, with traverse. Applicants traverse the restriction of all of the claims of inventions I, II and III. Applicants furthermore traverse the restriction of claims of inventions I and III.

II. The Traversal of the Restriction of All Claims

The requirement of the restriction between Inventions I, II and III is improper because it fails to meet the requirements of MPEP 808.02. According to MPEP 808.02, the Examiner must establish that there would be a serious burden on the Examiner if restriction is not required. As will be discussed below in detail, the Examiner has not established that there would be a serious burden on the Examiner if restriction is not required.

A. The Examiner has Already Searched the Inventions

This application has been pending for nearly five years. Claims of all three inventions I, II and III have been present since the application was filed. As evidenced by the prosecution history, claims of all three inventions I, II and III have already been searched. In particular, claims 1-8 of invention I have been searched, claims 9-16 of invention II have been searched, and claims 17-19 of invention III have been searched. It cannot be a burden for the Examiner to search the invention because the Examiner has already done so.

After pending for nearly five years, it is believed that no further searching is required. If updating of the search is required, updating the searching of the three inventions I, II, III would not be burdensome because the original search of the three inventions was not burdensome.

B. The Examiner Appears to Have Already Searched the Pertinent Classes and Subclasses

In the Restriction requirement, the Examiner alleges that Invention I is classified in class 705, subclass 35, Invention II is classified in class 705, subclass 38, and invention III is classified in class 705, subclass 35.

The Examiner appears to have already searched these subclasses. In particular, as evidenced by the PTO Form 892 accompanying the November 22, 2004 office action, the Examiner has already searched class 705, subclasses 35, 36, 37 and 38. Accordingly, it cannot be burdensome for Inventions I, II and III to require different searches in subclasses 35 and 38 because there is no need to search subclasses 35 and 38.

If the Examiner desires to update the search in subclasses 35 and 38, then the Examiner need only search for art issuing after October 11, 2005, which is the date of the last office action on the merits. Moreover, of that art, only references having a filing date predating August 2001 could even possibly be considered.

It is respectfully submitted that updating the search of subclasses 35 and 38 does not create a serious burden, considering the original search of these classes was not considered unduly burdensome.

C. The Examiner is Likely to Search Both Subclasses Anyway

Even if the Examiner were to update the searches for inventions I, II and III, searching the two subclasses identified by the Examiner as covering Inventions I, II, and III would not be create additional burden because the relevant subclasses are closely related and relate to all the inventions. As a result, the Examiner would presumably search the same classes/subclasses even if restriction were required.

As an initial matter, the subclasses 35 and 38 are closely related. In particular, the description of class/subclass 705/35 is given as “Subject matter drawn to a computerized arrangement for planning the disposition or use of funds or securities, or extension of credit.” The description of class/subclass 705/38 is given as “Subject matter drawn to a computerized arrangement for evaluation of the risk factors in a loan determination.” In addition, subclass 38 is indented under subclass 35, and thus is a “species” of the more general subclass 35. For this reason, it would be normal to search both class 35 and class 38 for at least invention II.

Moreover, it is not clear how Invention II would require a search under subclass 38 and Invention I would not. Both Invention I and Invention II involve generating a

repayment obligation. Thus, to the extent “risk factors are evaluated”, they would appear to be evaluated in the invention of Invention I as well as Invention II. While inventions I and II are distinct, they have similar limitations regarding subject matter pertinent to class/subclass 705/38. Accordingly, election of Invention I would require a search of both subclasses 35 and 38.

Most importantly, prior examination of the instant application reveals that a search of class/subclass 705/38 is required for all three inventions I, II and III. To this end, prior office actions have rejections of all of the claims as being anticipated by, or obvious over, Mottola. (See November 22, 2004 office action and October 11, 2005 office action). Mottola is classified in class 705, subclasses 36 and 38, but not subclass 35. It is apparent that prior art pertinent to *all three inventions* may be found in class/subclass 705/38 and not necessarily in class/subclass 705/35. Accordingly, it would appear that all three inventions require a search of subclass 38.

For this reason, it is submitted that examination of all three Inventions would not be burdensome without restriction. The Examiner will (or should) search all of the pertinent classes for all of the inventions, as evidenced by prior examination of this very case.

D. Conclusion

For the foregoing reasons, taken either independent or as a group, it is submitted that examination of all three inventions I, II and III would *not* present a serious burden. The subclasses identified by the Examiner have already been searched, and would likely require searching for all three inventions anyway.

III. The Traversal of the Restriction of Inventions I and III

The requirement of the restriction between Inventions I and III is improper because it fails to meet the requirements of MPEP 808.02. Accordingly to MPEP 808.02, the Examiner must establish that there would be a serious burden on the Examiner if restriction is not required. To establish this burden, the Examiner stated that “[b]ecause “...the inventions require a different field of search (see MPEP §808.02), restriction for examination purposes as indicated is proper.” (June 29, 2006 office action at p.3).

However, as stated by the Examiner, inventions I and III require an identical field of search. (See June 29, 2006 office action at p.2). For at least this reason, it is submitted that the Examiner has not met the requirements for restriction of at least inventions I and III.

IV. Conclusion

For all of the foregoing reasons, it is respectfully submitted that all of the pending claims are in a condition for prosecution on the merits. Favorable consideration and allowance of this application is, therefore, respectfully requested.

Respectfully submitted,



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